

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2 ABENROTH, et al.,

3
4 Petitioners,

5 v.

6
7 SKAGIT COUNTY,

8 Respondent,

9
10 SKAGIT COUNTY GROWTHWATCH,
11 CITIZENS TO PROTECT BAY VIEW RIDGE,
12 AND GERALD STEEL,

13 Petitioners,

14 v.

15 SKAGIT COUNTY,

16 Respondent,

17 And

18
19 BOUSLOG INVESTMENTS, L.L.C., JBK
20 INVESTMENTS, L.L.C., and JOHN BOUSLOG,

21 Intervenor

Case No. 97-2-0060c

**ORDER AMENDING COMPLIANCE
ORDER**

CASE NO. 07-2-0002

**ORDER AMENDING FINAL DECISION
AND ORDER**

22
23 THIS Matter comes before the Board upon the motion of Skagit County Growthwatch
24 (Growthwatch) for reconsideration of the Board's August 6, 2007 Compliance Order/Final
25 Decision and Order in these coordinated cases.¹ Skagit County and the Intervenor both
26 filed responses to the motion.² In this order, the Board amends the Compliance Order in
27 WWGMHB Case No. 97-2-0060c and the Final Decision and Order in WWGMHB Case No.
28 07-2-0002 to correct a factual error. This correction does not alter the Board's conclusions.
29
30

31 ¹ Growthwatch Motion for Reconsideration, August 15, 2007.

32 ² Skagit County's Response to Motion for Reconsideration, August 21, 2007; Intervenor's Response to
Growthwatch Motion for Reconsideration, August 21, 2007.

1 **BOARD DISCUSSION**

2 Motions for reconsideration before the growth management hearings boards are governed
3 by the Board's Rules of Practice and Procedure, Ch. 242-02 WAC. These rules allow
4 motions for reconsideration of a final decision:

5 After issuance of a final decision any party may file a motion for reconsideration with
6 a board in accordance with subsection (2) of this section. Such motion must be filed
7 within ten days of service of the final decision...
8 WAC 242-02-832(1) (in pertinent part).

9
10 The bases for reconsideration in the Board Rules of Practice and Procedure are:

- 11 (a) Errors of procedure or misinterpretation of fact or law, material to the party
12 seeking reconsideration;
13 (b) Irregularity in the hearing before the board by which such party was prevented
14 from having a fair hearing; or
15 (c) Clerical mistakes in the final decision and order.³

16 Petitioner first points to a clerical error in the date in the "footer" of the Board's Order.⁴ The
17 Board finds this error immaterial since the date of the order is properly shown at the
18 conclusion of the Compliance Order/ Final Decision and Order.

19
20 Petitioner then alleges an error in the Board's finding that the Skagit County Coordinated
21 Water System Plan, incorporated in the County's Comprehensive Plan, includes the Water
22 System Plan of PUD No. 1.⁵ The County agrees that the PUD No. 1 Water System Plan
23 was not incorporated in the County's Comprehensive Plan through the Skagit County
24 Coordinated Water System Plan but asserts that it is included in the County's
25 Comprehensive Plan through the 2003-2008 Capital Facilities Plan which is incorporated
26 into the Plan.⁶ Intervenor's argue that the Petitioner is attempting to offer new arguments
27
28
29

30
31 ³ WAC 242-02-832(2)

32 ⁴ Growthwatch Motion for Reconsideration at 2.

⁵ Ibid.

⁶ Skagit County's Response to Motion for Reconsideration at 5-6.
ORDER AMENDING COMPLIANCE ORDER/FINAL DECISION AND ORDER
Case Nos. 97-2-0060c & 07-2-0002
August 30, 2007
Page 2 of 4

1 after the Board's final decision "to establish the statutory burden of proof it failed to carry at
2 the Hearing."⁷

3
4 It is apparent that the Board's determination that the PUD No. 1 Water System Plan was
5 incorporated into the County Comprehensive Plan through the Skagit County Coordinated
6 Water System Plan was in error. However, the PUD No.1 Water System Plan was adopted
7 into the Plan through the 2003-2008 Capital Facilities Plan. Therefore, although the Board's
8 decision will be amended to correct the factual basis for the incorporation of the PUD Water
9 System Plan into the Comprehensive Plan, it does not alter the Board's determination of
10 compliance on this point.
11

12 ORDER

13 Based on the foregoing, the August 6, 2007 Compliance Order in WWGMHB Case No. 97-
14 2-0060c and the Final Decision and Order in WWGMHB Case No. 07-2-0002 at pp.
15 19(including foot-note 28), 23 (including foot-note 42), 67 (including foot-note 183) and 68
16 are hereby amended as follows:
17

18 The statements that the Water System Plan of PUD No. 1 was adopted as part of the
19 County's comprehensive plan by virtue of its being part of the Skagit County
20 Coordinated Water System Plan are STRICKEN. In their stead, the decision shall
21 state that *the Water System Plan of PUD No. 1 was incorporated into the County
22 Comprehensive Plan as part of the Skagit County 2003-2008 Capital Facilities Plan.*

23 The remaining terms of the decision, findings of fact and conclusions of law in the August 6,
24 2007 Compliance Order in WWGMHB Case No. 97-2-0060c and the Final Decision and
25 Order in WWGMHB Case No. 07-2-0002 shall remain in full force and effect.
26

27 So Ordered this 30th day of August, 2007.
28
29

30 _____
31 Margery Hite, Board Member
32

⁷ Intervenor's Response to Growthwatch Motion for Reconsideration at 2.
ORDER AMENDING COMPLIANCE ORDER/FINAL DECISION AND ORDER
Case Nos. 97-2-0060c & 07-2-0002
August 30, 2007
Page 3 of 4

Holly Gadbaw, Board Member

James McNamara, Board Member

Pursuant to RCW 36.70A.300 this is a final order of the Board.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil

Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person, by fax or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

Reconsideration. Pursuant to WAC 242-02-832(3), an order on reconsideration is not subject to a motion for reconsideration.